

Reality Check T

Contributing to the factual knowledge of Canadians about crime and criminal justice.

THE JOHN HOWARD SOCIETY OF CANADA

PREPARED BY THE JOHN HOWARD SOCIETY OF ONTARIO

“Sending Foreign Offenders to their Home Countries to Complete their Sentences”

The claim:

We should not be paying to keep people who are not Canadian citizens in prison. They should be sent back to their own countries to serve their sentence.

The reality:

Any person who is on Canadian soil is subject to the laws of Canada and all individuals including citizens, landed immigrants, visitors or those in the country without permission who violate the law are tried and sentenced according to Canadian law. It is our laws they have violated, the offence has occurred in this country and the sanctions imposed are ones that we have agreed are appropriate. Different countries have different laws and impose different sanctions than we do in this country. Canadians would object if we were automatically expected to carry out the sentence of all Canadians who violated the laws in another country. We should understand that other countries feel the same about their citizens who violate Canadian law in Canada.

While there is no rationale or means to obligate other countries to accept the return of their citizens who have been sentenced to prison for a crime in Canada and to carry out the sentence by imprisoning them in their prisons, there should be an opportunity for prisoners to return to their country with their consent and that of their country. The purposes of doing so are both humanitarian and correctional. Recognizing that prisoners who are foreign national often face isolation, culture shock, language barriers and problems related to the distance from family, a transfer would serve to alleviate these undue hardships borne by the offenders and their families. Also, by permitting greater access to community supports during incarceration, a transfer would facilitate their eventual reintegration into society.

Canada has signed treaties and conventions on the transfer of offenders that involve over 60 foreign countries and 45 states in the U.S. All of these enable offenders, with their explicit consent and with the discretionary approval of the sentencing countries and of the country of citizenship, to serve their foreign imposed sentence in their country of citizenship. These agreements specify that, once transferred, the offender's sentence is administered in accordance with the laws of the receiving country.

Even if the foreign national offender cannot obtain or does not consent to a transfer, he/she is subject to deportation upon release. A person who is a visitor or in the country illegally at the time of the offence will be issued a deportation order. A landed immigrant can be issued a deportation order and, when the person who has landed immigrant status is serving a lengthy sentence for a serious crime, a deportation order is virtually automatic. All have a right to appeal the deportation order and to a hearing to present their case and, if the order is not reversed on appeal in accordance with Immigration legislation, the person will be deported upon release whether on parole, statutory release or expiry of their sentence. It is very difficult to receive permission to re-enter Canada after deportation.

We tend to think that it is only those who have come to this country recently who are deported upon release from prison. There have been numerous examples of people who have lived in Canada since they were very young children but whose parents have not applied for citizenship on their behalf and were deported back to what is, for

them, a strange country where there are few, if any, family or friends to support them. The barriers to successful reintegration are multiplied and magnified. We have been criticized by some countries for this practice. Mothers or fathers are being deported while their spouse and children who are Canadian citizens are remaining. Contrary to what Canadians believe, amendments to legislation over the years and political posturing have made it increasingly difficult for someone who is not a citizen and has committed a crime not to be deported, even when there are good reasons not to deport.

Promoting the idea of “sending foreign offenders home to serve their sentence” without the proper context not only is simplistic, given the complexities of international relations, but worse, feeds intolerance.

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